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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,488	03/30/2004	Gordon R. Huber	32087-CNT1	3256
23589	7590	06/07/2007		
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			EXAMINER BROWN, COURTNEY A	
			ART UNIT	PAPER NUMBER
			1609	
			MAIL DATE	DELIVERY MODE
			06/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/812,488	Applicant(s) HUBER ET AL.	
	Examiner Brown A. Courtney	Art Unit 1609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-14 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-14 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-30-04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This application is a continuation of application 10/294057 and claims a priority date of 11/13/2002.

Claims 5-6 and 15-16 are canceled. Claims 1-4, 7-14, and 17-19 are pending and are rejected.

Some of the IDS references were not considered because the applicant did not supply them.

### **Claim Rejections – 35 USC 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-14, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayward et al. (US 5500239) in view of Cox et al. (US 4844936), and Boyle et al. (WO/2001/39608).

Claims 1-4, 9, 13, and 17 of the present application teach a method of producing edible foodstuff using the extrusion process which consists of adding a quantity of a drug and passage of this composition through an extrusion die, a preconditioner, and the addition of moisture and a surfactant. Hayward et al. teaches a method and an

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apparatus used to produce a food product that includes an extruder device in the form of a tubular barrel having an inlet end and an outlet end, with screw means situated within the barrel for mixing and advancing the food product ingredients from the inlet to the outlet end. The extruder barrel is equipped with a die assembly that allows the starting composition to be subjected to elevated temperature and pressure for cooking (column 2, lines 34-44). Hayward et al. teaches the initial step of passing the starting composition through a preconditioner prior to passage into and through extruder (column 5, lines 11-24). Hayward et al. also teach the addition of preservative (surfactants) and moisture to the starting composition during passage through the preconditioner (column 5, lines 11-24). In the abstract, Cox et al. teaches that medicaments (drugs) can be added to the extruded rice product (abstract and claims 1-3). Cox et al. also teach all that is recited by claim 17 except for the rice product comprising 0.0000001-2% of the drug. It would have been obvious to one having ordinary skill in the art to determine the optimum amount of drug. One would have been motivated to do this in order to make a food product that would have been effective in the delivery of the drug.

Claims 7, 12, and 19 of the present application teach a method of producing and the product of an edible foodstuff with the said active comprising tetracycline being encapsulated in an encapsulant. On page 8, lines 24-28 of the present application, the encapsulant is described as being a material with a high melting temperature fat. Boyle et al. teaches the method of medicating animal foodstuff, which comprises coating particles of foodstuff with gel containing tetracycline. Boyle et al. teach that the

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medicaments can be applied in a gel carrier or a suspension medium (encapsulated active) that may be provided by any suitable non-aqueous liquid such as natural vegetable oils (paragraph 13 of the specification).

Claims 8, 14 and 18 of the present application teach an extruded rice product comprising at least rice flour or partially cooked rice having the appearance of native rice with at least one property not found in native rice and at least one added drug. Cox et al. teach a rice product comprising at least partially cooked rice (column 3 lines 17-27) and rice flour (column 6, lines 66-68 of specification) and the addition of medicaments (abstract and claims 1-3).

Claims 10 and 11 of the present application teach the said foodstuff selected from the group consisting of carbohydrate-bearing grain products, proteinaceous grain products, meat and meat byproducts. Hayward et al. teach the preparation of an extruded fibrous product that is a mixture of carbohydrates, vegetables and animal protein, fat, fiber, vitamins and minerals (column 5, lines 12-24). As in the present application, Hayward et al. also teach that these ingredients are mixed and preconditioned or moisturized within a preconditioner or mixing cylinder (column 5, lines 12-24).

It would have been obvious to one having ordinary skill in the art to combine the teachings of Hayward et al., Cox et al., and Boyle et al. to devise a method of producing an edible foodstuff comprising a starting material of rice, rice flour, wheat or a meat; an encapsulated drug such as tetracycline; and a surfactant produced by extrusion that is

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moisturized within a preconditioner. One would have been motivated to do this in order to supplement human foods or animal feeds to administer drugs through ingestion.

No claims are allowed.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Jeffrey Stucker can be reached on 571-272-0911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



JEFFREY STUCKER  
SUPERVISORY PATENT EXAMINER